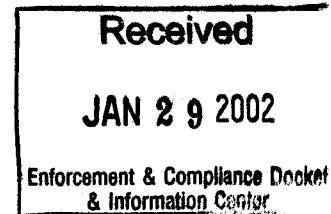


Nov. 16, 2001

U.S. Environmental Protection Agency
Enforcement & Compliance Docket
& Information Center (2201A)
Attn: Docket No. EC-2000-007
1200 Pennsylvania Ave., N.W.
Washington, D.C. 20460



Re: Request for Withdrawal of Proposal or Extension of Comment Period –
Electronic Reporting; Electronic Records (66 FR 46162, Aug. 31, 2001)

Dear Sir or Madam:

On behalf of the many undersigned organizations, I am writing to request that the Agency withdraw the above-referenced proposed rule, a.k.a. "CROMERRR." In the alternative, I would like to request a 60-day extension of the comment period.

It has become obvious, even to EPA staff, that the consequences of the regulatory language contained in the proposal would be drastically different than the preamble describes. In particular, it is clear that the ostensibly voluntary recordkeeping provisions will in practical effect be mandatory for the great majority of facilities regulated under EPA-administered laws.¹ Using EPA's own figures for the number of affected facilities, as well as upfront and annual costs, these recordkeeping requirements would cost \$48 billion initially and over \$20 billion annually thereafter. The former figure is seven times EPA's annual budget; the latter is more than four times the annual cost of OSHA's ill-fated ergonomics rule.

And yet, because it viewed these provisions as voluntary, the preamble contended that they would only be adopted by those few facilities for which they were cost effective. The preamble does not contain any analysis under the Regulatory Flexibility Act. It does not even mention the Small Business Regulatory Enforcement Fairness Act.

As a matter of administrative procedure, this glaring discrepancy means that the August 31 proposed rule is irremediably flawed. It simply could not serve as the valid basis for

¹ In a nutshell, this is because (i) the proposal's definition of "electronic record" encompasses any data that ever pass through a computer at any stage in the life of the information; (ii) any electronic record must meet the applicable CROMERRR criteria or it will no longer satisfy the underlying recordkeeping requirement; and (iii) paper recordkeeping is typically not an option, either because records are generated electronically in the first instance or simply because of practical considerations.

any final rule that recognized the true costs of the proposed language. As a matter of administrative efficiency, we do not believe that EPA's interests will be best served by continuing to collect comments on a proposal that so mischaracterizes itself.

We also have misgivings about the effect of the reporting provisions of CROMERRR. While these are also described as voluntary, we are aware of several EPA and state regulations that currently, or soon will, require certain reports to be filed electronically. Many of these would have to be revised under CROMERRR.

Thus, we strongly urge EPA to withdraw the August 31 proposal in its entirety. We further recommend that EPA initiate a dialogue process with affected entities so that, together, they can take stock of current EPA and state reporting and recordkeeping requirements, as well as current reporting and recordkeeping practices. These focused meetings could also address the range of possible security options and associated costs. We believe that if EPA initiated such meetings promptly after withdrawing the proposal, it would have plenty of time to issue an improved proposed rule and still meet its October 21, 2003 deadline under the Government Paperwork Elimination Act. If EPA remains on its current course, we are not so sanguine.

If EPA is unwilling to withdraw the proposed rule, we request at a minimum that EPA extend the comment period for 60 days, to January 28, 2002. While the current 90-day comment period may seem unusually long, it is insufficient in this case. Most important, because the preamble described the proposed rule as voluntary, the regulated community was slow to recognize what a substantial impact the proposal would have. Our outreach continues to find organizations that are unaware of this proposal and its potential effect. Indeed, we have only recently realized that many entities not regulated by EPA – e.g., labs, consultants, etc. – would still have to comply with CROMERRR because they generate or manage records for EPA-regulated entities.

The sheer breadth of the proposal's applicability also makes it difficult to comment within the allotted period. The proposal potentially applies to every recordkeeping obligation contained within 40 C.F.R. EPA itself has no compilation of such requirements. The American Chemistry Council has prepared a partial compilation (which we have provided to EPA) that is 208 pages long. It will take regulated entities a long time to identify their major recordkeeping practices that involve computers at any stage. To estimate the cost of the rule, they then must try to assess, either with in-house resources or contractors, the hardware and software changes that would be necessary to comply, as well as the increased technical support that would be needed thereafter. Ideally, these costs would then be rolled-up across the entire enterprise, and in many cases relayed to trade associations.

It has become increasingly clear that promulgating this rule will require a much more thorough understanding of its impacts and burdens than EPA currently possesses. The companies and associations that have signed this letter want to contribute to this effort,

but we cannot do an adequate job by November 29. On the other hand, if we could concentrate on developing comments until late January, we could thereafter share the benefit of that work with EPA in a series of focused meetings, as discussed above.

To recap, we request EPA to withdraw CROMERRR in its entirety. Failing that, we ask that EPA extend the comment period until January 28, 2002.

Thank you very much for your consideration of this request. Please feel free to contact me at 703-741-5166 with your decision or with any questions or comments.

Sincerely,



James W. Conrad, Jr.
Counsel
American Chemistry Council

On behalf of:

3M
Alliance of Automobile Manufacturers
American Chemistry Council
American Crop Protection Association
American Petroleum Institute
Aventis CropScience
BASF
Bayer
BP
Consumer Specialty Products Association
CRI International
Cytec Industries Inc.
Delphi Automotive Systems
The Dow Chemical Company
Dow Corning Corporation
Duke Energy
Eastman Chemical Company
Equiva Services LLC
ExxonMobil Chemical
FMC Corp.
General Electric
National Alliance of Independent Crop Consultants
National Association of Manufacturers
National Petrochemical & Refiners Association

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Pharmaceutical Research & Manufacturers of America
Procter & Gamble
Shell Chemical Co.
Soap & Detergent Association
Synthetic Organic Chemical Manufacturers Association
U.S. Chamber of Commerce
Utility Air Regulatory Group

cc: M. Schneider
M. Luttner
J. Retzer
D. Schwarz
E. Huffer